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**In the  
Supreme Court of the United States**

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NICHOLAS J. DECOULOS,  
as Trustee of Willowdale Realty Trust,  
*Petitioner,*

v.

MARITIMES & NORTHEAST PIPELINE, L.L.C.  
*Respondent.*

**On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the First Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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November 10, 2005

## QUESTION PRESENTED

The Question Presented is:

Whether a private natural gas company, that is the holder of a valid Certificate issued by the Federal Energy Regulatory Commission, is obligated to act in good faith, not relating to compensation which was agreed upon by the parties, but in negotiating the language to be contained in the Grant of Easement, all of which negotiations took place prior to the Condemnation Complaint being filed.

**STATEMENT PURSUANT TO RULE 29.6**

Maritimes & Northeast Pipeline, L.L.C. is a coventure with Duke Energy Corporation, a publicly traded company, Emera, Inc. and ExxonMobil Corporation. Ownership interests are as follows:

Duke Energy	77.53%
Emera, Inc.	12.92%
Exxon Mobil Corporation	9.55%

M & M Management Company, a subsidiary of Duke Energy, is the operating company.

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## **PETITION FOR A WRIT OF CERTIORARI**

Nicholas J. Decoulos as he is Trustee of the Willowdale Realty Trust respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

### **OPINIONS BELOW**

The opinion and judgment of the United States Court of Appeals for the First Circuit, App. 1a and 8a, are unpublished.

### **STATEMENT OF JURISDICTION**

The United States Court of Appeals entered its opinion and judgment on August 16, 2005. The Court has jurisdiction to review on a writ of certiorari the decision in question pursuant to 28 U.S.C. § 1254(1).

### **RELEVANT CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS**

The Fifth Amendment to the Constitution of the United States provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property,

without due process of law; nor shall private property be taken for public use, without just compensation.

**15 U.S.C.A. § 717(h) Right of eminent domain for construction of pipelines, etc.**

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds \$3,000.

**STATEMENT OF THE CASE**

This case presents the important question that when the amount of compensation has been agreed upon, is a private natural gas company that has been granted the federal power

of eminent domain obligated to act in good faith in attempting to acquire by contract the easement rights authorized by Federal Energy Regulatory Commission ("FERC"), prior to the condemnation petition being filed.

Respondent, Maritimes & Northeast Pipeline, L.L.C. ("Maritimes"), a natural gas company as defined in the Natural Gas Act ("NGA"), 15 U.S.C. § 717a(6), and the holder of a validly issued Certificate of Public Convenience and Necessity ("CPCN") authorizing the building and operation of a 25-mile, 30-inch gas pipeline from Methuen to Salem, Massachusetts, filed the present action to take temporary and permanent easements on 1.55 acres of land located in Peabody, Massachusetts, owned by the Petitioner, Nicholas J. Decoulos, Trustee of the Willowdale Realty Trust ("Willowdale").

The CPCN issued by FERC limited Maritimes' powers in any eminent domain proceeding as follows:

**FERC'S ORDER RELATING TO THE DELEGATION  
OF THE POWER OF EMINENT DOMAIN**

5. Maritimes' and Algonquin's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Maritimes' and Algonquin's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas. (App. 12a)

The Order is unambiguous. It limits Maritimes to one 30-inch pipeline, the size of which cannot be increased, and does not authorize Maritimes to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

For a period of time, Maritimes and Willowdale conducted negotiations as to the location of the easement and as to the language of the covenants to be contained in the Grant of Easement, which would have set forth the benefits and obligations of both parties in the exercise of the easement rights. (App. 29a)

Maritimes' letter dated April 16, 2002, (App. 57a) verifies the amount of compensation was agreed upon and clearly states that the unresolved issue was the disputed legal language of both the easement and the certificate of payment.

On May 20, 2002, Maritimes sent a "final offer" letter to Willowdale and accompanying the letter were two documents, a Grant of Easement and a Certificate of Payment (44a-56a).

The Grant of Easement provided for the installation of a "pipeline or pipelines" and paragraph 9 of Certificate of Payment contained a provision that it could not be recorded at the Registry of Deeds; otherwise, the grantee's covenants would be null and void.

On May 23, 2003, Willowdale responded to Maritimes' last offer by stating that it refused to execute the Grant of Easement and Certificate of Payment because of the covenant barring the recording of the Certificate of Payment. (App. 60a).

Maritimes misrepresented to Willowdale that covenants obligating Maritimes are not recorded at the Registry of Deeds. Appendix 39a, is an example of one of many